

1
2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481

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6 In the Matter of:

7
8 DELPHI CORPORATION,

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10 Debtor.

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13
14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17
18 October 3, 2007

19 10:00 AM

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21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE
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P R O C E E D I N G S

THE CLERK: Please be seated.

THE COURT: All right, Delphi Corporation.

MR. BUTLER: Your Honor, Jack Butler and Kayalyn Marafioti from the Skadden firm and Neil Berger from the Togut firm here on behalf of the Debtors for this specially set hearing. Your Honor, we filed an agenda, and I'd like to address the three items on the agenda in the order that they're listed.

THE COURT: Okay, that's fine.

MR. BUTLER: Your Honor, the first item on the agenda, item #1, is the MDL and Insurance Settlement Approval Motion at Docket #9296. This was originally noticed for the September Omnibus Hearing. The objection deadline for the motion passed on September 20th, with the exception of extensions granted to certain parties as listed on the agenda. And Your Honor, at this point in time we're gonna ask the Court to adjourn this to the October 25, 2007 Omnibus Hearing, and with respect to those entitled to a supplemental objection deadline, that we set that deadline for 4 p.m. prevailing Eastern time on October 18, 2007.

The parties that are entitled to that objection deadline based on prior communications with the company and that were cleared with Chambers are the Unsecured Creditors Committee, United States Department of Labor, Wilmington Trust Company as Indenture Trustee, and Ad Hoc Committee of Trade Creditors and

1 a group of bondholders represented by Goodwin Procter,
2 including DK Acquisition Company, Elliott Management Company,
3 Sando Management Company, Silver Point Capital and CR
4 Intrinsic. And Your Honor, with respect to that matter, it's
5 the Debtors' present intention that we would actually proceed
6 on the 25th with that settlement. The fairness hearing in the
7 District Court is on November 13th, and we will hopefully --
8 our discussions over the next several weeks will be productive
9 and will hopefully not have a lot of objections, but we will
10 need to proceed at that time.

11 THE COURT: Okay. That's fine.

12 MS. STEINGART: Excuse me, Your Honor. Bonnie Steingart
13 from Freid Frank on behalf of the Equity Committee. I had
14 indicated to Mr. Butler that I wanted to be heard in connection
15 with this motion very briefly. We believe that to the extent
16 that the overall Plan changes, and there is a change in the
17 recoveries that are now set forth in the Plan and Disclosure
18 Statement that have been circulated, that there may be aspects
19 of the MDL that are objectionable. And we don't believe that
20 we can be precluded from filing an objection should those
21 changes occur and should our constituents be impacted.

22 Certainly, as the MDL exists now and as it exists in the
23 context of the Plan, we're supportive; indeed, when this
24 proposal was made initially, I believe that I spoke in favor of
25 the Debtors' efforts and the structure of the Plan that

1 existed. To the extent that things change and the
2 distributions and scheme that has been outlined under the Plan
3 does change we would, or might have -- might be impacted in a
4 way that would cause us to object to the MDL settlement. As
5 we've discussed with Debtors, we're hoping that, as with the
6 Debtors, that no such thing occurs, and we continue to be
7 supportive of all the Debtors' efforts to resolve the issues
8 with which they're now confronted.

9 THE COURT: Okay, well, as I saw the list, the Equity
10 Committee wasn't --

11 MS. STEINGART: The Equity Committee is not on the list
12 Your Honor.

13 THE COURT: Of those who reserve their right to -- was
14 this just raised today or was this something that you've been
15 talking about?

16 MS. STEINGART: Well, I first saw the footnote and
17 understood that we weren't included recently, Your Honor.

18 THE COURT: Okay.

19 MS. STEINGART: I did not, you know, think at the time --
20 we'd understood the Plan and other things were up for change.

21 MR. BUTLER: Your Honor, we understand the Equity
22 Committee's reservation of rights. This same list was reviewed
23 at the September Omnibus Hearing, was based on people who spoke
24 with us about potential objections prior to the objections
25 deadline passing. And we're certainly prepared to accept the

1 reservation of rights, except that we'll reserve our rights to
2 address it if it ever becomes necessary. I hope it won't, but
3 we think the objection deadlines meant something. There are a
4 number of other key stakeholders who did not reserve their
5 objection rights, and this is not the MDL's being considered
6 outside of the Plan from the company's perspective.

7 THE COURT: All right, well, I'll note the mutual
8 reservations of rights.

9 MS. STEINGART: Thank you, Your Honor.

10 THE COURT: Okay.

11 MR. BUTLER: Your Honor, the next matter on the agenda,
12 matter #2, is the Saginaw Chassis Asset Sale Motion at Docket
13 #9368. This -- the only objection that was filed to this prior
14 to the objection deadline was the limited objection of the UAW,
15 as you may recall from the Omnibus Hearing in September. That
16 matter has been resolved consensually with the UAW. What we're
17 waiting for now is the completion of a supply agreement between
18 the prospective purchaser and General Motors Corporation.
19 Those parties are working in good faith to resolve that. As of
20 October 1st it had not been resolved, and the parties entered
21 into an amended and restated first amendment to the Asset
22 Purchase Agreement which extended the deadline for that to the
23 close of business on October 15, 2007. As a result of that
24 amendment, Your Honor, we'd ask that this be moved now for
25 hearing at the October 25th Omnibus Hearing.

1 THE COURT: Okay. But as of now there are now pending
2 objections?

3 MR. BUTLER: There are no pending objections. The gating
4 item at the moment in terms of the conditions going forward at
5 the hearing are sorting out the supply agreement, and the
6 parties, I think, are working diligently on that in that
7 respect.

8 THE COURT: All right, that's fine. I'll hear that on the
9 25th.

10 MR. BUTLER: Your Honor, that takes us then to matter #3,
11 which is the Solicitation Procedures Motion filed in connection
12 with the filing of the Debtors' Disclosure Statement and Plan
13 of Reorganization. The Solicitation Procedures Motion is filed
14 at Docket #9266.

15 Your Honor, the Solicitation Procedures Motion was filed
16 on September 6, 2007. At that time it was filed along with the
17 Debtors' joint Plan of Reorganization of Delphi Corporation and
18 certain affiliates as Debtors and Debtors-In-Possession at
19 Docket #9263, and the Disclosure Statement with respect to the
20 joint Plan of Reorganization which was filed at Docket #9264.
21 Your Honor, this is the commencement of our Disclosure
22 Statement and Solicitation Procedures Motion hearing, and we're
23 before the Court under Section 1125(b) of the Bankruptcy Code
24 asking the Court to begin to consider approval of our
25 Disclosure Statement as containing adequate information such

1 that we can begin the post-petition solicitation of
2 Reorganization Plan during the fourth quarter of 2007.

3 From the Debtors' perspective, the Disclosure Statement
4 includes detailed information regarding the treatment of claims
5 and interests, the company's 5-year business plan, events
6 leading up to and during Delphi's Chapter 11 cases, and an
7 outline of the plan investor agreement and rights offering
8 proposed in connection with the Plan.

9 The proposed Disclosure Statement also outlines Delphi's
10 transformation, which centers around five core areas.
11 Agreements that have now been reached with all principal U.S.
12 Labor unions which create a competitive reign in which to
13 conduct Delphi's business going forward. Second, agreements
14 with General Motors that were announced and filed publicly on
15 September 6th and are appendices to the Plan of Reorganization
16 that outlines General Motors financial support for certain
17 legacy and labor costs and certain future business commitments
18 to Delphi. Third, Delphi's future product portfolio and
19 manufacturing footprint on a transformed basis. Fourth,
20 Delphi's planned transformation of its salaried work force and
21 progress reducing SG&A more generally to support the realigned
22 portfolio. And finally, Delphi's plans to fund it's U.S.
23 defined benefits program.

24 With respect to this latter area, Your Honor, I'm also
25 pleased to advise the Court that the Debtors this week received

1 the final waivers from the Government, from the Internal
2 Revenue Service, with their necessary to move forward with
3 respect to retaining the U.S. defined benefit programs on a
4 frozen basis consistent with the Plan arrangement.

5 Your Honor, Delphi's plan, as I think, self-evident, is
6 based upon a series of global settlements and compromises. It
7 involved essentially every major group of constituents in
8 Delphi's reorganization cases. These include, among others,
9 Delphi, it's principal labor unions, General Motors and other
10 of its stakeholders, as well as the Lead Plaintiffs and certain
11 securities, and there is some multi-district litigation. The
12 Disclosure Statement discusses in detail the terms of these
13 settlements and compromises and the circumstances and processes
14 that gave rise to them.

15 Your Honor, from the Debtors' perspective, the Disclosure
16 Statement contains the type of information that should be
17 included in an adequate Disclosure Statement as generally
18 approved by Courts in large reorganization cases, including in
19 this District, where securities are to be issued, including,
20 first, a summary of the plan; that is, both summarizing the
21 distributions and estimated amounts of claim in each class
22 that's set forth in the introduction and in Article #9.

23 And towards that end, as I think, Your Honor, we advised
24 you at the September 27th Omnibus Hearing, as a result of the
25 uncertainties in the capital markets, the company is engaged

1 presently with its principal stakeholders in reviewing what I
2 described then as in formulating -- what I described then as
3 razor-like potential amendments to the Plan that are intended
4 to address the capital markets issues that we are dealing with.
5 And in fact, I think we have made progress on that even since
6 last week. We've had another round of discussions with our
7 lead lenders, which have been very productive. We are engaged
8 presently in discussions with our statutory committees and with
9 General Motors and the Plan investors, and there are a lot of
10 meetings as between various of those groups. And it is the
11 Debtors' expectation that we should be able to move forward on
12 the timetable that we described at the Omnibus Hearing,
13 although there is certainly more work to be done over the next
14 several weeks before the end of this month. But so, Your
15 Honor, we do anticipate that there may be, as I said before,
16 several razor-like amendments, focused amendments to the Plan,
17 which will necessitate some additional disclosure.

18 The second part of the area of the Disclosure Statement
19 that contains the type of information which we think is
20 appropriate and customary in these cases are the plan voting
21 instructions and procedures that are described in Articles 2
22 and 16 of the Disclosure Statement. There's, third, a
23 description of the Debtors' businesses, including it's current
24 officers and directors, that are set forth in Article 3, which
25 described Delphi's role as a leading global technology

1 innovator with significant engineering resources and technical
2 competencies in a variety of disciplines, and describes it's
3 supply relationship to the global automotive industry and to
4 the OEM customers, as well as its involvement in other business
5 segments in the non-automotive space.

6 The fourth general area, Your Honor, the Disclosure
7 Statement covers in Article 4 is a history of the Debtors,
8 explaining the Debtors' spin-off from General Motors in 1999
9 and the transaction subsequent to that. The fifth general area
10 are the events and circumstances leading to the filing of the
11 bankruptcy petitions, and also describes in Article 4. Sixth,
12 the Disclosure Statement addresses the pre-petition capital
13 structure of the Debtors in Article 4, as well as a detail of
14 the Delphi's Transformation Plan in Article 5 of the Disclosure
15 Statement.

16 Your Honor, the Debtors' business plan for emergence is
17 discussed in Article 6; and in fact, the 5-year business plan
18 is attached as Appendix C to the Disclosure Statement. Article
19 7 addresses plan investor and exit financing arrangements, and
20 here too, as I described to the Court on September 27th, there
21 will be additional information filed as we finalize the exit
22 financing arrangements. The Debtors would expect, prior to
23 solicitation, to enter into a form of commitment letter with
24 its lead lenders in the capital markets with respect to the
25 capital markets transaction that we will be proceeding with.

1 Article 8 of the Disclosure Statement addresses significant
2 events that have occurred during these Chapter 11 cases. We've
3 all lived those together, I'll not summarize them here, they
4 are set forth in the Disclosure Statement. And then Article 9
5 deals with the Chapter 11 Plan in particular. Of, I think,
6 significant importance in a hearing like this is Article 10 of
7 the Disclosure Statement which sets forth the general
8 considerations and risk factors to be considered by those
9 voting on the proposed Plan of Reorganization. And then
10 there's a series of other matters addressed in Articles 11, 12,
11 and 13 dealing with securities and tax implications,
12 feasibility and the best interest test.

13 I should point out, Your Honor, that in terms of the
14 appendices of the Plan, we have already disclosed and we
15 disclosed on September 6th not only our historical financial
16 statements as Appendix B to the Disclosure Statement and the 5-
17 year business plan as Appendix C, but also Rothschild's
18 valuation of the Debtor at Appendix D, which as of December 31,
19 2007, valued the estimated total enterprise value range at
20 between 11.4 billion and \$14.4 billion in terms of value. And
21 Appendix E to the Disclosure Statement set out in detail a
22 liquidation analysis that the Debtors believe will allow it at
23 confirmation to meet the requirements of the best interest
24 test.

25 Your Honor, we have made revisions since filing the Plan

1 and Disclosure Statement on September 6th. We have circulated
2 those redline pages both to those who have objected thus far to
3 the Disclosure Statement and those who have been given a
4 supplemental objection deadline, and I'll address those in a
5 few moments.

6 So that we can dispose of at this first day of the
7 Disclosure Statement hearing with some of the business that we
8 need to put in the record, I do have, Your Honor, some items
9 that I want to put into evidence at this point that deal
10 primarily with what's been circulated to date and with notice.

11 THE COURT: Okay.

12 MR. BUTLER: As Your Honor I think recalls, we have
13 noticed more than 650,000 parties in connection with this
14 hearing, and I just want to run through what's been
15 accomplished so far. So we have to admit into evidence 20
16 exhibits which have been shared with the objectors and
17 potential objectors. They include as Exhibit-1 the Disclosure
18 Statement at Docket #9264, the joint Plan as filed on September
19 6th at Docket #9263 as Exhibit-2. Exhibit-3 is a blackline to
20 the proposed revisions to the Disclosure Statement thus far
21 with the people who've been providing input to us and with the
22 objectors who filed objections and with certain of the
23 potential objectors. Exhibit-4 is a blackline of proposed
24 changes to the Plan to date, as of yesterday, October 2nd.
25 Exhibit-5 is the actual Solicitation Motion at Docket #9266.

1 Exhibit-6 is the notice that was approved to be sent out at --
2 also at Docket #9266. Your Honor earlier entered an order
3 scheduling today's hearing, and that's on Exhibit-7 at Docket
4 #8898. We have prepared and filed with our omnibus reply a
5 chart of objections to the objections filed thus far to the
6 Disclosure Statement; those are at Exhibit-8.

7 And then on to the notice matters. First, Exhibit-9 is
8 the Affidavit of Service of Elizabeth Adam regarding Disclosure
9 Statement and Plan in motion, which has also been filed at
10 Docket #9544. Exhibit-10 is the Affidavit of Service of Evan
11 Gershbein regarding the Notice of Motion. This was filed --
12 it's a very voluminous exhibit. It was filed at Docket #9608.
13 Exhibit-11 is the Affidavit of Service of Financial Balloting
14 Group, LLC, on the Disclosure Statement hearing notice served
15 on holders of public securities. Again, Your Honor, that's
16 also a voluminous exhibit. It's been filed on the docket at
17 Docket #9630, and as I said, it's Exhibit-11.

18 Exhibit-12 through 20 are Affidavits of Publication.
19 Exhibit-12 is the Indianapolis Star Publication at Docket
20 #9631. Exhibit-13 is the Kokomo Tribune notice of publication
21 at Docket #9632. Exhibit-14 is the notice of the Detroit Free
22 Press at Docket #9633. Exhibit-15 is the notice in the Detroit
23 News at Docket #9634. Exhibit-16 is a supplemental notice in
24 the Detroit News and Free Press at Docket #9635. Exhibit-17 is
25 a notice in the Plain Dealer at Docket #9636. Exhibit-18 is a

1 notice in the Blade at Docket #9637. Exhibit-19 is a notice in
2 the Wall Street Journal in the global edition at Docket #9638.
3 And finally, Exhibit-20 is the Notice of Publication in the New
4 York Times at Docket #9639.

5 Your Honor, I move these matters into evidence in support
6 of the Debtors' Disclosure Statement.

7 (Debtors' Exhibit-1 previously marked for identification)

8 (Debtors' Exhibit-2 previously marked for identification)

9 (Debtors' Exhibit-3 previously marked for identification)

10 (Debtors' Exhibit-4 previously marked for identification)

11 (Debtors' Exhibit-5 previously marked for identification)

12 (Debtors' Exhibit-6 previously marked for identification)

13 (Debtors' Exhibit-7 previously marked for identification)

14 (Debtors' Exhibit-8 previously marked for identification)

15 (Debtors' Exhibit-9 previously marked for identification)

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21 (Debtors' Exhibit-15 previously marked for identification)

22 (Debtors' Exhibit-16 previously marked for identification)

23 (Debtors' Exhibit-17 previously marked for identification)

24 (Debtors' Exhibit-18 previously marked for identification)

25 (Debtors' Exhibit-19 previously marked for identification)

1 (Debtors' Exhibit-20 previously marked for identification)

2 THE COURT: Okay. Does anyone have any objections to the
3 introduction of those items into evidence for purposes of this
4 hearing? Okay, I'll admit them then.

5 (Debtors' Exhibit-1 admitted into evidence)

6 (Debtors' Exhibit-2 admitted into evidence)

7 (Debtors' Exhibit-3 admitted into evidence)

8 (Debtors' Exhibit-4 admitted into evidence)

9 (Debtors' Exhibit-5 admitted into evidence)

10 (Debtors' Exhibit-6 admitted into evidence)

11 (Debtors' Exhibit-7 admitted into evidence)

12 (Debtors' Exhibit-8 admitted into evidence)

13 (Debtors' Exhibit-9 admitted into evidence)

14 (Debtors' Exhibit-10 admitted into evidence)

15 (Debtors' Exhibit-11 admitted into evidence)

16 (Debtors' Exhibit-12 admitted into evidence)

17 (Debtors' Exhibit-13 admitted into evidence)

18 (Debtors' Exhibit-14 admitted into evidence)

19 (Debtors' Exhibit-15 admitted into evidence)

20 (Debtors' Exhibit-16 admitted into evidence)

21 (Debtors' Exhibit-17 admitted into evidence)

22 (Debtors' Exhibit-18 admitted into evidence)

23 (Debtors' Exhibit-19 admitted into evidence)

24 (Debtors' Exhibit-20 admitted into evidence)

25 MR. BUTLER: Thank you.

1 THE COURT: I need copies of the two blacklines.

2 MR. BUTLER: Okay, I'll provide them, Your Honor. May I
3 approach, Your Honor?

4 THE COURT: Yes, thank you.

5 (The Court receives documents)

6 MR. BUTLER: Your Honor, turning to the objections -- I'm
7 going to come back, Your Honor, to those exhibits I just passed
8 up again that are Exhibits-3 and 4. But turning to the
9 objections, I want to briefly address where we are with respect
10 to the objections. There were, as I indicated, notices sent
11 out to 665,000 Creditors, shareholders, and other Parties-In-
12 Interest, and there have been to date approximately 10
13 objections filed to the Debtors' Disclosure Statement which are
14 included on the exhibit chart which is Exhibit-8 in the record.
15 In addition, Your Honor, given the plan amendment process that
16 we're involved in with certain of our key stakeholders, as I
17 reported to the Court on September 27th at the Omnibus Hearing,
18 we indicated that we would not conclude the hearing today, but
19 after we've finished the business that we do have before the
20 Court today, we will ask the Court to continue this matter for
21 a second day of consideration. We're asking the Court to
22 consider scheduling that for 1 p.m. on October 25th, it's the
23 afternoon of our Omnibus Hearing date, and the setting with
24 respect to those entitled to a supplemental objection deadline,
25 setting 4 p.m. Eastern Daylight Time on Friday, October 19,

1 2007 as the supplemental objection deadline which would apply
2 to the Creditors Committee, the Equity Committee, General
3 Motors, the plan investors, Wilmington Trust as an Indenture
4 Trustee, the Ad Hoc Committee of Trade Creditors, and that
5 group of senior noteholders that Goodwin Procter represents
6 which I described previously as the five bondholders. And we
7 have, on this record, are referring to those individuals as
8 potential objectors.

9 I should point out, Your Honor, that our agreement with
10 the potential objectors is that the consideration of the
11 objections today would be without prejudice, and then that is
12 to say I don't expect any of them to have anything to say on
13 these particular objections should they file an objection down
14 the line, but those potential objectors' rights to file
15 whatever objections they believe are appropriate and timely on
16 October 19th is preserved.

17 THE COURT: Okay, now, Disclosure Statements and sometimes
18 Plans are often changed as a result of a Disclosure Statement
19 Hearing, so I don't believe you need to re-notice all 665,000
20 people with the changes that you're contemplating between now
21 and the hearing to come, but you're obviously going to file
22 those changes on the docket so people can access them
23 electronically?

24 MR. BUTLER: Your Honor, what we will plan to do is --
25 what we tried to do yesterday and had some technical problems

1 in getting done, but our intention would be to file blackline
2 changes in connection with our omnibus reply to the objections.
3 We're obviously working with both the objectors and the
4 potential objectors, as we did in this process, and we've
5 resolved some of these objections I'll get to them in a few
6 minutes that are before the Court today. With respect to the
7 potential objectors, we're dealing with them directly on
8 blackline issues and considering language from them.
9 Ultimately, we'll be filing an omnibus reply prior to the Court
10 hearing. That omnibus reply will have attached to it all the
11 blackline changes from where we are at this hearing going
12 forward, and that will be in the docket.

13 THE COURT: Okay.

14 MR. BUTLER: It is our practice, Your Honor, not to file a
15 Amended Plan and Disclosure Statement formally as separate
16 docket items until we complete this hearing. Once Your Honor
17 rules on these matters, and we have a final Plan and a final
18 Disclosure Sate, we will file officially a first amended -- a
19 signed First Amended Plan of Reorganization and a signed First
20 Amended Disclosure Statement.

21 THE COURT: That's fine. I have no problem with the
22 response being the vehicle for updating people on the current
23 status of the document. And then you're going to file a notice
24 of the continuance of the Disclosure Statement Hearing so that
25 --

1 MR. BUTLER: We will -- we'll actually -- I think what we
2 planned to do under these circumstances, we don't normally give
3 Your Honor Scheduling Orders, but there is already a scheduling
4 order for this hearing. We're gonna issue a second one in
5 Chambers that would be consistent with the record today.

6 THE COURT: Okay.

7 MR. BUTLER: So Your Honor, I think that takes us then,
8 let me just briefly describe the revisions in Exhibit-3 and
9 Exhibit-4. Exhibit-3 is the redline to proposed revisions to
10 the Disclosure Statement to date, and Exhibit-4 is the proposed
11 changes to the Plan.

12 Taking the Plan items first, there are not many revisions
13 at this point in time. Most of them are self-explanatory or
14 clean-up changes that I'm not gonna dwell on. We've made
15 changes like relating the MDL settlement to adding a phrase,
16 {quote} "against the Debtors" {end quote} to various
17 definitions as requested by the MDL Plaintiffs. We've also
18 clarified the treatment of administrative claims to clarify
19 that those incurred in the ordinary course of business will be
20 paid or otherwise satisfied in the ordinary course of business.
21 We've added guarantees as a type of instrument that the Debtors
22 may execute as part of a restructuring transaction under the
23 Plan.

24 We have revised the release and exculpations provisions to
25 account for the releases and exculpation provided for in the

1 various memoranda of understanding with the Debtors' U.S. Labor
2 Unions and those MOUs. And we're continuing, as you can expect
3 Your Honor, to reconcile and make sure that we have reconciled
4 the GM settlement documentation and the labor MOUs with the
5 Plan. You may recall at the time you considered labor MOUs,
6 there are a number of provisions that carry over into the Plan
7 in terms of things we've agreed to do, and we continue to
8 reconcile those and make sure that we're -- counsel to the
9 unions are comfortable with that language, and there may be
10 further clarifications as we move forward with that.

11 In connection with the Disclosure Statement, we have
12 updated the Disclosure Statement to, among other things,
13 reflect developments since September 6th, including the events
14 of the September 27th Omnibus Hearing, such as approval of the
15 Reclamation Procedures Motion and the Claims Estimation Motion.
16 We've also covered new business events that have occurred
17 including, for example, the closure of the brake hose and the
18 catalyst sale transactions.

19 We've also, Your Honor, included language to satisfy the
20 requests of certain Parties-In-Interest. We're talking to a
21 lot more people than the record reflects, Your Honor, as is
22 normally the case here. So for example, we have included
23 language regarding the State of New York Workers Compensation
24 Board claims on Disclosure Statement 144 and 145 to address
25 concerns expressed to us by the Attorney General here in New

1 York. We've also included language to justify the Lead
2 Plaintiffs regarding certain issues relating to the MDL
3 settlements. We've made a series of, again I'll call them
4 clean-up changes dealing with references, defined terms, and
5 plan summary language, and we've made those changes now.

6 We have been, Your Honor, as I indicated earlier, involved
7 in a lengthy series of conversations and I would say good faith
8 discussions with certain of the potential objectors regarding
9 the issues that are important to them. And there's language
10 we're working on with them, some of which has been agreed to in
11 principle and others which relate to trying to come to an
12 overall resolution of that potential objectors' concerns.
13 Those changes are not reflected in Exhibits-3 or 4. We'll deal
14 with those and add them in once we complete the work with that
15 particular party. And so we're -- because we're trying not to
16 do that on a piecemeal basis, but trying to deal with those
17 concerns of each objector I've taken as a whole. My concern is
18 to do otherwise, we'll never get done. At some point you've
19 gotta have people say these are all the concerns I have and you
20 need to address them as packages, and we're trying to follow
21 that process.

22 With respect to the objections that are before the Court
23 today, as I indicated, they are set forth in the chart on
24 Exhibit-8, and let me just quickly run through those in terms
25 of from a summary perspective. The Debtors, Your Honor,

1 believe that we have met the requirements of Section 1125 of
2 the Code in connection with the Solicitation Procedures Motion
3 and the Disclosure Statement that's before the Court, but there
4 are -- the objections that are before the Court today address a
5 number of areas.

6 Several objections address, in the Debtors' view, not the
7 adequacy of the information contained in the Disclosure
8 Statement, but instead object to certain provisions of the
9 Plan. It's the Debtors' view as we get to each of these that
10 we will assert, and we believe the Court should sustain our
11 view, that a Disclosure Statement Hearing is not the time to
12 consider merits of the Plan itself and that Plan objections
13 should be filed for the Confirmation Hearing once the Court's
14 entered the Solicitation Procedures Motion. We believe they're
15 premature today.

16 It's the Debtors' view that the only objections that we
17 should have to address today and have Your Honor resolve are
18 objections to the adequacy of information that's disclosed in
19 the Disclosure Statement, and we think the view here in the 2nd
20 Circuit and then the Southern District of New York is pretty
21 clear that Disclosure Statements get approved unless the
22 Disclosure Statement describes a plan that is so fatally flawed
23 that confirmation is impossible. None of the objections before
24 the Court today make that assertion.

25 So to go through now the specific objections, and I'll

1 just, with Your Honor's permission, take them in the chart
2 order. I think that's probably the simplest way to address
3 those issues. Let me start with the objection filed by Sharyl
4 Y. Carter at Docket #9513 and again at Docket #10417. These
5 are letters sent to the Court which have now been docketed by
6 the Court and which the Debtors are treating as informal
7 objections to the Disclosure Statement. The letters from Ms.
8 Carter, among other matters, simply say that she doesn't agree
9 we filed Chapter 11 and make other assertions. We don't
10 believe that there's any cognizable objection in either of
11 those docket numbers to the Disclosure Statement Hearing or the
12 Solicitations Motion.

13 THE COURT: Okay. Is Ms. Carter present? All right, I've
14 reviewed her objection, and I agree with the Debtors' position
15 that this is not a valid objection to a Disclosure Statement,
16 and further the Debtors' Disclosure Statement sets forth the
17 Debtors reasons for filing Chapter 11, you know, adequately, so
18 that objection is overruled.

19 MR. BUTLER: Thank you, Your Honor. Your Honor, the next
20 three objections I'll take together. They're filed by the same
21 firm and deal with the same issues. That would be Docket
22 #9668, the Peugeot JAPY Industries, S.A.; Docket #9669, PBR
23 Tennessee Inc., and a series of PBR related entities; and
24 Docket #9670, SABIC Innovative Plastics U.S., LLC. One
25 comment, Your Honor, about SABIC, just to bring the Court up to

1 date. SABIC Innovative Plastics U.S., LLC, now holds the
2 business formerly held by GE Plastics. GE Plastics was a
3 member of the Unsecured Creditors Committee. That business was
4 sold during the month of September, closed at some point in
5 September, maybe towards the beginning, to SABIC and was placed
6 in this entity, SABIC Innovative Plastics, U.S., LLC. Ms.
7 Leonard filed a notice with respect to the Creditors Committee
8 yesterday in terms of amending the appointment of the Creditors
9 Committee to reflect the relationship of that transaction with
10 SABIC Innovative Plastics U.S., LLC, being appointed as the
11 successor to GE. So this is just in terms of having a record
12 clear on those objections.

13 Your Honor, the objections of these parties basically
14 argue that you can't have an adequate -- you can't go forward
15 with the Disclosure Statement because it's inadequate for
16 anyone to make an informed judgment unless they know whether
17 their contract's gonna be assumed or rejected is the first
18 objection. And then they argue that the objection timeline
19 that we have here, which is approximately 7 days before the
20 plan -- before the plan voting deadline under the timetable is
21 inadequate.

22 And Your Honor, I would just simply respond to this by
23 saying I think that we're following the customary practices in
24 this District. The footnote 5 to our omnibus reply gave
25 examples of six major cases in this District, including cases

1 Your Honor has presided over, in which the exhibit filing
2 deadline to file the list of either assumed or rejected
3 contracts, depending upon what the rule is in the particular --
4 the rule of construction is in the particular plan, is in a
5 period somewhere between 5 and 10 days prior to the voting
6 deadline. In the case of Northwest it was 3 days. In the case
7 of Singer and Enron and several other cases it was 5 days. In
8 the case of Adelphi and Revco and Delta it was 10 days.

9 Although I would point out, Your Honor, that those -- in
10 those cases, several of those cases, like Adelphi and Enron,
11 the construct was at that schedule, once filed, could be
12 amended at any time up and to the effective date of a plan.
13 This particular plan, it takes a more modified or more moderate
14 view of that, and the construct here is that the schedule that
15 is filed can be amended up to the Confirmation Hearing but
16 thereafter can only be amended with respect to a particular
17 contract in which a final -- a cure order is entered, to the
18 extent there's a cure dispute. And if the cure order is
19 entered, we have 5 business days to reject that contract
20 because we're unwilling to make the cure.

21 And I would just point out in terms of the practice that I
22 think that we are well within the practice here in the Southern
23 District in how we've approached this with 7 days. I do
24 acknowledge that there was a typographical error in one of the
25 documents, it made it look like it was 4 days. That's still in

1 the range, but we had actually allowed 7 days.

2 And I point out that even the law firm who brought this
3 objection themselves have used similar processes and similar
4 periods. We went back and looked at Foley & Lardner's cases
5 and at the Intermet Corporation case filed in this -- in the
6 Eastern District of Michigan actually allows -- which was in
7 '95 -- actually allowed 6 days between the time that you file
8 the executory contract list and the time that there's a
9 deadline to voting.

10 I think it's pretty undisputed that this type of
11 procedure is both customary and reasonable, and I don't think
12 there's anything in the case law that would not support it.

13 THE COURT: Okay. Why don't I hear from these objectors.
14 And I guess the B of A objection somewhat overlaps with this,
15 so I might as well hear from them, too, unless that's been
16 resolved.

17 MR. BUTLER: No, Your Honor, I think that's slightly
18 different. And Mr. Berger is presenting that because you may
19 recall --

20 THE COURT: All right.

21 MR. BUTLER: -- this is the third or fourth time that B of
22 A has been before the Court with this particular transaction.
23 Mr. Berger has been representing them.

24 THE COURT: Okay.

25 MR. BUTLER: Or representing the company with respect to

1 them.

2 THE COURT: All right.

3 MR. RICHMAN: Good morning, Your Honor, Michael Richman,
4 Foley & Lardner, and appearing for the three objectors that Mr.
5 Butler identified; that would be SABIC Innovative Plastics, the
6 PBR entities, PBR Tennessee and several others identified in
7 the papers, and Peugeot.

8 I think we need to discuss the objections on a slightly
9 different basis than Mr. Butler presented. We have really a
10 fundamental due process objection that is very easy to resolve,
11 and I'm actually surprised that I have to be here to argue this
12 because it is so easy to resolve.

13 Rule 2002(b) governs the time that a Debtor has to provide
14 for voting and objections to plan confirmation, and it says
15 that 25 days is the required time for disclosures of material
16 information, both to the Disclosure Statement and for plan
17 confirmation. There is a provision, Rule 9006, which allows
18 the Court to shorten the time for cause, but so far as I can
19 tell, (A), that puts the burden on the Debtors to demonstrate
20 cause, the burden shouldn't be on my clients to demonstrate why
21 they can't make decisions in a short a timeframe, and (B), I
22 don't believe any of the papers the Debtors filed provide
23 cause. In fact, I think the only reason that's been given
24 today as to why there should be 7 days before 300,000 contract
25 parties learn whether their contracts are to be assumed or

1 rejected, including the five or so contracts involved with the
2 sets of clients that I represent, is that it is a practice
3 that's been followed in other Courts, including in a case that
4 my firm was involved in. But that's not cause. There's
5 nothing in the record to indicate that there were objections to
6 those timeframes resolved by judges, nor any attempt to address
7 the required time period, the required minimum time period, set
8 forth in Rule 2002.

9 Now, in our case, quite simply, millions of dollars are at
10 stake with each of the three clients that hinge on whether
11 their contracts are assumed or rejected. I don't think it's
12 disputable that with respect to all 300,000 contracts the
13 decision to assume or reject and the economic impact of that is
14 directly material and relevant to feasibility of a plan. So
15 whatever the practice was in other cases, I don't understand
16 how a position can be taken that that isn't material
17 information that should be disclosed in a Disclosure Statement
18 at least 25 days before voting and at least 25 days before a
19 Plan Confirmation Hearing.

20 Now, I'm not volunteering to represent all 300,000
21 contract parties and I -- we've said in the papers and I've
22 said to Debtors' counsel, just tell us about our contracts 25
23 days beforehand. That's the easy way to fix this. Then we
24 have our due process rights. Then we aren't faced with a
25 decision because it's more fundamental than just voting. I

1 would concede that we could probably decide in less than 25
2 days whether to vote yay or nay on a plan depending on what
3 happens with the contracts.

4 But if a decision is made, depending on the treatment of
5 the contracts to contest plan confirmation, that is hugely
6 economic for these clients. It's a major decision; 7 days
7 doesn't do it. There may have to be discovery. There may have
8 to be extensive briefing. There's a lot of analysis. There's
9 a lot of other associated activities where the Code and the
10 rules say you get at least 25 days for that unless there's
11 cause to shorten.

12 So we say, I think quite reasonably, why can't you -- why
13 are you pushing it out? In fact, if the Debtors today were
14 prepared to keep to the schedule that was in the Procedures
15 Motion, they would have been telling all the contract parties
16 the assumption and rejection decisions in early November. And
17 there were suggestions in the papers and in the press that the
18 Confirmation Hearing is not likely to occur until December. So
19 if they kept to the early November deadline everyone would
20 still have adequate notice and an ability to determine what to
21 do.

22 But again, I'm not volunteering for everybody else in the
23 world. I just say with respect to the three contracts involved
24 with SABIC, the LLC Agreement with PBR -- that's important,
25 Your Honor, because we don't even think it's an executory

1 contract, but we don't know what the Debtors think. And until
2 they tell us whether they regard that as something they can
3 assume or not, that has a huge impact on PBR. And in the case
4 of Peugeot, it's one long-term contract.

5 So we have an LLC agreement and four contracts that they
6 have to pull out of the mass of 300,000 and just tell us 25
7 days before and not 7 days before what they're gonna do. And
8 that's what the rules require.

9 THE COURT: Well, as far as the rule applying to notice of
10 a Motion to Assume or Reject a Contract, that's complied with,
11 right?

12 MR. RICHMAN: I'm -- I didn't hear your question.

13 THE COURT: The rule governing the period of notice for a
14 Motion to Assume or Reject a Contract, that's complied with,
15 right?

16 MR. RICHMAN: Yes, that's correct, but I --

17 THE COURT: There's sufficient notice to determine any
18 objection over cure, adequate assurance or whether it's
19 executory or not.

20 MR. RICHMAN: I think the difference here is that it's
21 inextricably intertwined with the feasibility of the plan, our
22 rights to object to plan confirmation, which are wrapped into
23 the 25 day notice requirement of Rule 2002. So, you know, I
24 would in some cases -- and I'm aware of cases where parties
25 acquiesce in shorter time periods for assumption, rejection and

1 then cure rights are litigated beyond that, but here we have
2 situations where with each of the clients, they may decide they
3 may need to contest plan confirmation itself. So then the
4 question is is there cause to give them only effectively 7 days
5 notice of that? Because that, in substance, is what happens
6 here if they don't learn until 7 days before the objection
7 deadline whether their contracts are gonna be assumed or
8 rejected.

9 THE COURT: They're not going to --

10 MR. RICHMAN: And there doesn't seem to be cause to do
11 that.

12 THE COURT: They're not going to think about this issue
13 until 7 -- until they get the notice? Why aren't they capable
14 of thinking in the alternative, starting with the more than 25
15 notice that they'd get?

16 MR. RICHMAN: Well that's what I've asked. I -- that is -
17 -

18 THE COURT: No, no. Why can't they think --

19 MR. RICHMAN: Oh, you're saying why aren't the clients?
20 Well then --

21 THE COURT: -- to themselves, well, we'll object if it's
22 rejected and we won't object if it isn't rejected.

23 MR. RICHMAN: The question is the economics of the effort
24 required to contest a plan, because if there's gonna be a full
25 contest on a plan, which may include discovery, which may --

1 which could be extensive, which may include briefing, which may
2 include experts, all of those rights -- for them to have to
3 invest in a potential objection before they find out what's
4 gonna happen to their contracts is totally unfair. And again,
5 no cause.

6 THE COURT: Everything other than the objection itself
7 follows the objection, doesn't it?

8 MR. RICHMAN: Well, Your Honor --

9 THE COURT: You wouldn't take discovery before you object?

10 MR. RICHMAN: Right, but my point is to prepare, you're
11 either forcing the parties to have to mount a contest within 7
12 days or you're saying go ahead and spend all the money and
13 invest in the litigation anticipating that. Either way isn't
14 fair. Either way compromises our due process rights, but more
15 fundamentally, you're putting the burden, I think, with these
16 questions on my clients to justify why they can't do it in 7
17 days. The rules and the Code say the burden should be on the
18 Debtors to justify why they can't do it in more than 7 days.

19 THE COURT: Well, I guess I don't really see why the
20 decision to assume or reject is really part of the plan.

21 MR. RICHMAN: Because the --

22 THE COURT: I understand it's relevant to your clients'
23 decision whether to object or not to the plan, but it's not --
24 it's a separate motion. They can withdraw the motion. They
25 can say I've decided not to do it.

1 MR. RICHMAN: If there are what we would be believe to be
2 incorrect decisions with respect to assumption or rejection, I
3 mean, the PBR case is the easiest one because if they try to
4 assume an LLC agreement that we believe was validly and legally
5 terminated, that would be a legal objection to plan
6 confirmation. You're right, they could carve it out. They
7 could try to address it in some other way, but that would be an
8 objection to confirmation. But there's also an objection on
9 feasibility grounds depending on the economics of the
10 assumption rejection decisions that apply to all 300,000
11 contracts.

12 THE COURT: But doesn't that enter into the business
13 judgment standard of determining whether to assume or reject?
14 If the decision to assume the contract renders the plan not
15 feasible, then wouldn't I deny the Motion to Sssume as an
16 improper exercise of business judgment?

17 MR. RICHMAN: You might, but that is a different issue
18 than the question of how much notice we should be able to get
19 of these decisions in order to have the rights that the
20 bankruptcy rules provide. And so I say again, why can't the
21 Debtors -- if the Confirmation Hearing isn't going to be until
22 December -- if when they filed the Procedures Motion they were
23 prepared to announce their assumption rejection decisions on
24 all 300,000 contracts by early November, what prevents them
25 from taking the five or six contracts for our three sets of

1 clients and telling us 25 days beforehand what they're gonna do
2 with our contracts? Why -- what is their cause for not doing
3 that? I don't understand that. There's no record of that. So
4 I stand on the rules. The rules say I should get 25 days.

5 THE COURT: Well, they got an extension of the time to
6 assume or reject until a period after confirmation.

7 MR. RICHMAN: That's --

8 THE COURT: They have the right to make the decision
9 later, frankly, if they want to.

10 MR. RICHMAN: If the right to make the decision later
11 compromises the disclosure obligations --

12 THE COURT: Oh, I understand that, but I'm not sure it
13 does. But why don't I hear from Mr. Butler on this.

14 MR. BUTLER: There are a couple of items, Your Honor. I
15 think the Court has had, over the course -- and I think can
16 take judicial notice of the record made in this case about the
17 300,000 contracts that we deal with with our suppliers and the
18 dynamic nature of our supply base. The company is very
19 actively involved in evaluating these things. It's in a
20 renewed ground of negotiations as we speak with virtually all
21 of its suppliers, going through and sorting those through as we
22 prepare to look into the 2008 year. And the Debtors want the
23 maximum amount of time to be able to maximize value for the
24 benefit of the estates to review and make the final decisions
25 on these agreements. The Debtors are vehemently opposed to

1 giving special treatment to Mr. Richman's clients over and
2 above other clients -- I mean, other -- rather other potential
3 suppliers.

4 Mr. Richman's got lots of procedural rights available to
5 him. If they want a decision made earlier about their Motions
6 to Assume or Reject, they can file a Motion Seeking to
7 Terminate or Shorten the Time to make that and demonstrate
8 cause. Apparently, they don't want to do that. They don't
9 want to come to the Court under the provisions available to
10 them in the Bankruptcy Code to have those decisions made. They
11 want to try to use this procedural objection to get the same
12 benefit.

13 And I do think, Your Honor, that there is a record in this
14 case about the need for the Debtors to maximize value of the
15 supply chain. I think the Court has heard extensive testimony
16 over the last several years in connection with approval of the
17 caps procedures, of the Assumption Procedures Motion and some
18 of the other matters in this case about the detailed amount of
19 work and analysis that goes into that, and it's occurring again
20 right now.

21 And Your Honor, we believe that there is cause for giving
22 the Debtors the opportunity to maximize value, and there's no
23 prejudice to Mr. Richman's clients because as Your Honor
24 pointed out, even the mechanics of our plan, as well as the
25 Bankruptcy Code, gives them plenty of time dealing with any

1 assumption or rejection decision that might be made as it
2 relates to cure, as it relates to adequate assurance, as it
3 relates to any of the other issues that may be important to
4 them.

5 And Your Honor, we would argue in light of the number of
6 contracts, in light of Your Honor having previously extended
7 with respect to the -- that only applied to non-residential
8 property leases, Your Honor, of theirs but, obviously, the
9 company has an extended period of time to make these assumption
10 and rejection decisions as we go forward.

11 And the only final point that I would make here is that in
12 terms of being able to file an objection, Mr. Richman could
13 file an objection today, if he wanted to, to confirmation. The
14 Plan's on file. He could file that objection today and reserve
15 whatever rights are important to his clients if that's what he
16 wanted. The litigation of that objection is not going to occur
17 -- on any of the objections is not going to occur until after
18 we get past the objection deadline in any event, and we have
19 scheduled conferences and deal with those.

20 There are many ways Mr. Richman can protect his clients.
21 What he's trying to do here is to get a special deal for them
22 where they're treated ahead of the other 299,950 contracts.
23 And Your Honor, I think the Court should -- and I don't, by the
24 way, believe that Mr. Richman can, you know, actually stand by
25 the view that it's a violation of practice here for the company

1 to seek this 7 day deadline as provided for in the Plan or
2 Disclosure Statement.

3 THE COURT: Okay. Well, Section 1125(a)(1) of the Code
4 provides or defines adequate protection as information of the
5 kind and in sufficient detail as far as is reasonably
6 practicable in light of the nature and history of the Debtor
7 and the condition of the Debtor's books and records that would
8 enable a hypothetical, reasonable investor typical of holders
9 of claims or interests of the relevant class to make an
10 informed judgment about the plan.

11 I do not believe that the Debtors' decision whether to
12 assume or reject the contracts of Peugeot, PBR and SABIC is so
13 material that it would affect the decision of a hypothetical,
14 reasonable investor in any of these classes to decide whether
15 to assume or reject the Plan. So consequently, that
16 information does not need to be provided as part of the
17 Disclosure Statement.

18 That raises or leaves the separate issue of whether those
19 three objectants have, under the bankruptcy rules, adequate
20 notice of their opportunity to object to the Plan. And whether
21 they have that, I believe, is somewhat informed by Section
22 1123(b)(1) of the Code -- I'm sorry, (b)(2) of the Code, which
23 provides that a plan may, subject to Section 365 of this title,
24 provide for the assumption, rejection or assignment of any
25 executory contract or unexpired lease of the Debtor not

1 previously rejected under such section. That is, I believe,
2 that the Code is drafted so that as long as there is sufficient
3 notice under the bankruptcy rules pertaining to motions in
4 connection with or pursuant to Section 365, parties to
5 executory contracts and unexpired leases will have sufficient
6 notice of the Debtors' decision to assume or reject. It's
7 indisputable here that if the schedule is filed when the
8 Debtors say they'll file it that parties to executory
9 contracts, such as Peugeot and the other two objectors, will
10 have adequate notice of the Motion to Assume or Reject.

11 I do not believe that the Plan itself must set forth
12 whether the Debtors intend to assume or reject these contracts
13 now or within 25 days of the objection deadline for Peugeot and
14 the other objectors to make the decision whether to object or
15 not to the Plan. They know what their contracts provide. They
16 know that there is a binary decision that the Debtors are going
17 to make whether to assume or to reject. They can anticipate a
18 rejection and plan their objection to the Plan accordingly.
19 And consequently, I believe they have sufficient notice to do
20 so, although my practice, generally, is to provide a 10 day
21 notice, which gives people more than enough time to prepare an
22 objection, which I would assume they would have outlined in
23 advance and done the sufficient planning for in advance since,
24 obviously, organizations like Peugeot are capable of thinking
25 into the future and don't have to wait until they get the

1 notice to start thinking about whether they want to object or
2 not. But that 10 day period would be subject to modification
3 for good cause. If, for example, the Debtor was in the middle
4 of negotiations with the party and the like or was overwhelmed
5 with dealing with a whole series of negotiations.

6 So one of my comments, generally, on these -- on the
7 Disclosure Statement was to recommend that you make the exhibit
8 deadline the 10th -- 10 days before the objection deadline, as
9 opposed to 7, subject to your coming back to me and saying,
10 well, we missed the deadline, in this particular instance, for
11 a good reason and which didn't prejudice a party.

12 MR. BUTLER: Your Honor, we will take that guidance, put
13 it in the timetable, and when we come back on -- for the second
14 day of the hearing we will present that to the Court.

15 THE COURT: Okay. All right.

16 MR. BUTLER: Thank you, Your Honor. Your Honor, the next
17 objection on the -- that is before the Court on Exhibit-8 is
18 Docket #9674. This is the Ace Companies. I'm pleased to
19 report, Your Honor, this objection has been settled. Ace is
20 represented by Ms. Simkulak here in the Court from the Duane
21 Morris firm. We have agreed on language to Section 2.1 of the
22 Plan, which is set forth in the blackline. And Ace did ask
23 that I make a statement on the record that Ace is not
24 consenting to any rejection of their contract and none is
25 implied by anything that we have said or done. There's

1 actually a --

2 THE COURT: Well, you have a stipulation --

3 MR. BUTLER: We do, Your Honor.

4 THE COURT: -- assuming the contract.

5 MR. BUTLER: So -- we do. So -- but they wanted us to say
6 on the record that we're -- that they're not consenting to
7 rejection.

8 THE COURT: All right.

9 MR. BUTLER: I've made that statement, as I was asked to
10 do.

11 THE COURT: Okay. I saw the language in your blackline
12 and that's acceptable. As you all probably know, I'm generally
13 opposed to elaborate reservations of rights that already exist
14 because at a minimum they distract everybody, and at their
15 worst they then cause bells to ring in other peoples' minds to
16 say, well, if these are reserved maybe I didn't have what I
17 thought I had. But the language you've agreed to is fine.

18 MR. BUTLER: Thank you, Your Honor. The next objection,
19 Your Honor, is Docket #9677. It's Bank of America, and Mr.
20 Berger is handling that matter for the Debtors.

21 THE COURT: Okay. And I believe we have Bank of America's
22 counsel on the phone, correct?

23 MR. GREGG: Yes, Your Honor, John Gregg on behalf of Bank
24 of America.

25 THE COURT: Okay.

1 MR. BERGER: Good morning, Neil Berger of Togut, Segal &
2 Segal for the Debtors. Mr. Gregg is on the phone. I think
3 it's fair to say that his objections boil down to three issues,
4 and I'll let him present each in particularity, but one is
5 whether or not the Debtors are disclosing in the Disclosure
6 Statement whether or not they are going to honor existing
7 guarantees -- execute new guarantees.

8 As you recall, Your Honor, Bank of America has two
9 aircraft leases. They've been before this Court four prior
10 times, now a fifth time today. The Debtor -- I'm sorry, Bank
11 of America also objects to the cure procedures in the
12 Disclosure Statement that describe the plan procedure for
13 assumption and rejection and adequate protection procedures.
14 And finally, they are concerned about the continuing effect of
15 a prior stipulation that provided them with certain rights
16 regarding the assumption and rejection of these lease
17 agreements.

18 We have modified the Disclosure Statement, particularly in
19 the restructuring transactions, to address the guarantee issue
20 to make clear that the Debtors will be authorized to execute
21 guarantees if they deem it appropriate in their business
22 judgment in connection with the restructuring transactions.
23 And that generally would apply as well to assumption and
24 rejection procedures.

25 The other two objections, Your Honor, we think go to the

1 Plan. We have provided the blackline of the Disclosure
2 Statement to Mr. Gregg and I'll leave it to him to respond to
3 those changes.

4 THE COURT: Well, what changed, just so I'm aware of it?
5 I saw the reference to guarantees in the restructuring
6 transactions, but the other blackline is where?

7 MR. BERGER: I'm sorry, Your Honor. It's one change.
8 It's the 7.3 of the restructuring transactions, and it's
9 subsection (b), "The execution and delivery of appropriate
10 instruments of transfer, assignment, assumption," and we've
11 inserted "guarantee" --

12 THE COURT: Right.

13 MR. BERGER: -- specifically to address this concern. And
14 --

15 THE COURT: But I thought you referenced some other
16 language too, in addition to that language. Or did I mishear
17 you?

18 MR. BERGER: Maybe I wasn't articulate, Your Honor.

19 THE COURT: Okay. All right. So --

20 MR. BERGER: That is the guarantee provision that we've
21 added. What I've made reference to is that there is a
22 procedure in the Plan of Reorganization that was drafted today,
23 as described in the Disclosure Statement, that deals with
24 adequate assurance and future performance provisions, which
25 would -- and it's language is broad enough to deal with this

1 particular issue.

2 THE COURT: All right. And that was in the original
3 language, you haven't changed that?

4 MR. BERGER: No, no, Your Honor. We don't think that it
5 needs to be changed.

6 THE COURT: Okay.

7 MR. BERGER: This is a global issue and we don't --

8 THE COURT: All right.

9 MR. BERGER: -- think that we need to negotiate one- offs.

10 THE COURT: Okay. All right. Mr. Gregg, does that
11 resolve your issues?

12 MR. GREGG: I believe so, Your Honor. I had a little
13 difficulty in hearing Mr. Berger, but based on the
14 modifications to the Plan and Disclosure Statement that were
15 circulated last night, Bank of America will withdraw its
16 objection with respect to the failure to disclose the
17 possibilities that new guarantees may need to be executed.

18 Bank of America also will withdraw its objection to the
19 Solicitation Procedures Motion and will also withdraw its
20 objection with respect to the procedures for assumption set
21 forth in Section 9(g)(2)(b) of the Disclosure Statement but, of
22 course, reserve its right to make an objection at a later date
23 as part of the Debtors' attempt to confirm their Plan.

24 THE COURT: Okay.

25 MR. GREGG: One remaining issue that Bank of America has

1 is that Section 9(g)(2)(b) states that the Debtors shall --
2 excuse me -- shall solely provide cure, and I believe that that
3 objection can be resolved if the Debtors will be so kind as to
4 affirmatively state that they are not seeking to preclude the
5 right of a party to adequate assurance of future performance
6 and are, in fact, disclosing that either through the definition
7 of a cure or through later language in Section 9(g)(2)(b) of
8 the Disclosure Statement.

9 THE COURT: That's how I read the definition of cure and
10 the adequate assurance discussion in the Disclosure Statement,
11 but, Mr. Berger, do you read it differently?

12 MR. BERGER: Your Honor, I don't think there's anything
13 that needs to be changed. The definition --

14 THE COURT: Okay.

15 MR. BERGER: -- of cure is what it is and we think it
16 encompasses this concern.

17 THE COURT: It encompasses monetary and non-monetary cure,
18 and adequate assurance may include providing assurance of the
19 type of support that may involve a non-debtor, for example, if
20 that's in the agreement.

21 MR. BERGER: That's right. And Your Honor, in the
22 adequate assurance procedure described in the Plan, the
23 language has "any other matter" --

24 THE COURT: Right.

25 MR. BERGER: -- is broad enough to encompass anything like

1 this.

2 THE COURT: Okay, and that's how I read it, with the --
3 particularly with the addition of the word "guarantee" in the
4 restructuring transaction, I think there's no hole.

5 MR. BERGER: Thank you, Judge.

6 THE COURT: Okay.

7 MR. BUTLER: Your Honor, the next objection on Exhibit-8
8 is Docket #10398, the Lead Plaintiffs, which was a reservation
9 of rights provision. I think we are -- there's Mr. Etkin. I
10 was looking and he was blocked by -- behind me. I think we
11 have substantially resolved our language changes with Mr.
12 Etkin, but I'm going to let him comment on the record.

13 MR. ETKIN: Good morning, Your Honor. We had been in
14 discussions with the Debtor concerning some language changes to
15 the Disclosure Statement and changes that would be required
16 under the Plan based upon those changes in advance of the
17 hearing. We have been in discussions. The Debtor did extend
18 our objection deadline until 1 p.m. on Monday. We did file the
19 protective objection. We continue to discuss certain of the
20 issues. We've gotten some additional language from the Debtors
21 that we're reviewing.

22 I must apologize, I didn't have the opportunity since last
23 night to review the blackline. Thumbing through it during the
24 course of the hearing this morning, it looks like several of
25 the things that we had discussed that the Debtor indicated

1 would be modified or some language would be added has been
2 included. So we'll continue with those discussions going
3 forward, and hopefully we'll have nothing to say on the 25th.

4 THE COURT: Okay. And let me say I looked through the
5 blackline as well just since I got it this morning, and the
6 language not only seems to me to be appropriate, but in a
7 couple cases, answers a question I had. So certainly as far as
8 the changes are concerned, I didn't have any problem with them.

9 MR. ETKIN: I appreciate that --

10 THE COURT: And if you have others, I imagine they'll be
11 of a similar nature and they can be dealt with at the continued
12 hearing.

13 MR. ETKIN: Right. Our primary focus, Your Honor, is
14 consistency between the MDL settlement agreement and the --

15 THE COURT: Right.

16 MR. ETKIN: -- Plan and Disclosure Statement.

17 THE COURT: Okay.

18 MR. ETKIN: Thank you, Your Honor.

19 MR. BUTLER: One moment, Your Honor.

20 (Pause in proceedings)

21 MR. BUTLER: Your Honor, I just wanted to make sure that
22 the procedural record's correct here with respect to Docket
23 #10398, and that is -- and based on the comments made on the
24 record, the Debtors would agree that that objection could be
25 continued to the second day of the hearing, provided that Mr.

1 Etkin would provide by the supplemental objection deadline, if
2 there's anything still outstanding, a supplemental objection
3 that states what it is in particularity so we know what we're
4 dealing with.

5 THE COURT: Right, and that goes for everyone who's gotten
6 an extension. And obviously this doesn't work unless people
7 give the language in. Okay.

8 MR. BUTLER: Your Honor, the next objection in Exhibit-8
9 is Docket #10413. This is an objection of the Skilled Trade
10 Employees, Adelco Electronic Systems, and they are all
11 employed, I believe, at the Oak Creek Wisconsin plant. And
12 their objection is that the plant ought to remain open and that
13 examination of financial records be used -- be reviewed to
14 determine how Delphi came about its Transformation Plan.

15 Your Honor, from the Debtors' perspective, while we
16 respect the right of our employees to express their views, we
17 don't think either of these objections are cognizable
18 objections to the Disclosure Statement Hearing, and they're
19 either an objection to confirmation, or as we would argue if
20 they're pressed at that time, they're actually time barred by
21 the UAW-MOU approval, which is a final order. And these
22 matters that they're concerned about, including the closing of
23 that plant, is provided for in the UAW-MOU, which has already
24 been reviewed by the Court and is a final order.

25 We respect that there can be differences of views over

1 that subject, but we don't believe there's a cognizable
2 objection for today's hearing.

3 THE COURT: Okay, is anyone here on behalf of these
4 objectors? All right, I will overrule this objection. This is
5 the Debtors' Disclosure Statement. The Debtors are not
6 required to set forth other parties' views on the Debtors'
7 decision making process. The Disclosure Statement itself
8 contains adequate information on the two issues relevant to the
9 plant closing. Those are the steps the Debtor has taken in
10 connection with their transformation plan, as well as the
11 description of the Debtors' negotiations with an ultimate
12 resolution with their unions regarding, among other things,
13 plant closing issues. So the information in the Disclosure
14 Statement is adequate on this point.

15 MR. BUTLER: Thank you, Your Honor. Your Honor, the last
16 objection on Exhibit-8 is Docket #10414. This is the objection
17 of Ernest A. Knobeispiesse. Mr. Knobeispiesse is a retiree, an
18 executive retiree of Delphi, and he's complaining about the
19 treatment of the Supplemental Executive Retirement Program, or
20 SERP, in connection with the Disclosure Statement and Plan.

21 Your Honor, we believe -- I'm going to make two comments
22 about this particular motion. I think -- in reviewing his
23 letter even again this morning, I think Mr. Knobeispiesse did
24 point out one issue that we are clarifying in the Disclosure
25 Statement, and that is in the summary of the Disclosure

1 Statement, the summary in the front part does not clarify what
2 we've said throughout the Disclosure Statement, which is
3 estimates of recovery are based on plan valuation. And so when
4 we speak of par plus accrued recovery for a particular class,
5 it's based on it's at-plan value. And valuation may or may not
6 a subject of content at the Confirmation Hearing, but that's
7 the fact. And we have -- we're going to clarify those charts
8 to make sure that that modification is made.

9 As to the balance of Mr. Knobeispiesse's objection, we
10 don't think it's cognizable at the Disclosure Statement
11 Hearing. It may be that he will choose to press a objection at
12 confirmation, although I'm not sure he fully understands the
13 proposed treatment of the retired SERP plans. They're part of
14 the general unsecured class, and they will be able to file a
15 claim under the deadline set forth in the Plan. There's a
16 special SERP deadline because they were not under the original
17 bar date -- limited under the original bar date, so there'll be
18 a supplemental bar date for them. And as those claims are
19 dealt with in the claims process, those parties will have the
20 opportunity to have claims determined in the claims process,
21 and ultimately, they will be entitled, if the claim is allowed,
22 to a lump sum payment in Plan currency as that's determined
23 under the Plan.

24 And Mr. Knobeispiesse, in his relief request, seemed to be
25 asking for something along those lines, although he did say

1 he'd like it all kicked --

2 THE COURT: He wanted all cash --

3 MR. BUTLER: He wanted either all stock or all cash at his
4 option. I don't think any of the parties, principle parties,
5 are going to provide that option to Mr. Knobeispiesse. But in
6 terms of actually being able to address maybe part of his
7 concerns, they may actually have been addressed in the
8 construct of the Plan. So we would ask -- we would indicate
9 we'll make the one modification indicated on the record and ask
10 that the objection otherwise be overruled.

11 THE COURT: All right, is Mr. Knobeispiesse here or on the
12 phone? All right, I reviewed his objection. I actually
13 believe he did understand the treatment provided for his claim
14 under the Plan, he just didn't like it, and that's clearly a
15 Plan objection; it's not appropriate to be raised at this stage
16 of the case. The Debtors have even improved the description of
17 that treatment by the change that Mr. Butler just described, so
18 on that basis, the objection will be overruled.

19 MR. BUTLER: Thank you, Your Honor. Your Honor, that
20 disposes of all of the objections to the Disclosure Statement
21 that have been filed, with the exception of those parties who
22 are -- have been on this record classified as potential
23 objectors that have the benefit of the extended objection to
24 supplemental objection deadline of Friday October 19th, at 4
25 p.m., assuming that's acceptable to Your Honor. So at this

1 point, Your Honor, I'd like the Court to consider the Debtors'
2 request to continue this matter to a second hearing date for
3 continuation of the Disclosure Statement Hearing at 1 p.m.
4 Eastern Daylight Time or -- I think it's still Eastern Daylight
5 Time on that date, but if it's not, prevailing Eastern Time on
6 Thursday, October 25th, and to establish the supplemental
7 objection deadline at 4 p.m. on Eastern Daylight Time on Friday,
8 October 19th. And if that's acceptable to the Court, we will
9 submit an order to the Court dealing with the matters
10 determined on this record today and with the schedule and the
11 continued hearing date.

12 THE COURT: Okay, those deadlines and that hearing date
13 are fine with me, so I'll continue the hearing to then. I
14 thought what I would do, though, I had just three or four
15 questions and/or comments on what you gave me. Some of them
16 have already been dealt with by the blackline and by a couple
17 of your comments on the record, but I thought it would be
18 worthwhile to go through them in any event, to the extent they
19 haven't been.

20 The summary treatment of the general unsecured claim class
21 --

22 MR. BUTLER: I'm sorry, Your Honor?

23 THE COURT: The summary treatment of the general unsecured
24 claim --

25 MR. BUTLER: Yes.

1 THE COURT: -- class that appears on page Roman numeral
2 XVI --

3 MR. BUTLER: Yes,

4 THE COURT: -- there's a -- this may just be a typo that
5 you're already going to fix, but the bolded language that
6 begins, "Funded debt claims of 2.5 billion," I just found that
7 language confusing. It's different than the other -- it
8 includes other classes -- it just didn't -- I didn't know what
9 you were trying to get at there. And it's different than --

10 MR. BUTLER: Your Honor, I'm trying to track where you are
11 at the moment.

12 THE COURT: Oh, okay.

13 MR. BUTLER: Is it Romanette XV or XVI?

14 THE COURT: XVI, DS XVI, it says "Class Description,
15 Treatment Under the Plan, General Unsecured Claims."

16 (Counsel confer)

17 THE COURT: Anyway, it -- I wasn't -- I just found that
18 language confusing where it begins, "funded debt claims of 2.5
19 billion plus other general unsecured claims of 1.7 billion or
20 less." But then it says, "which amount is inclusive of cure
21 claims and the treatment provided to section 510(b) note
22 claims." It just -- given that 510(b) note claims and 510(b)
23 equity claims and ERISA claims are a separate class, I found
24 this language confusing.

25 MR. BUTLER: Your Honor, we will try to clarify that. The

1 reality of that language is that we're trying to cover what's
2 in the \$1.7 billion cap, the GUCC cap you --

3 THE COURT: Oh, all right.

4 MR. BUTLER: -- the G-U-C-C cap.

5 THE COURT: Okay.

6 MR. BUTLER: And the 1.7 billion that many of us in the
7 room have spent a lot of time negotiating about included the
8 value that's being accorded to the MDL settlement.

9 THE COURT: All right, but they're not --

10 MR. BUTLER: That's inclusive in the 1.7 --

11 THE COURT: But they're not in this class.

12 MR. BUTLER: No, they're in the separate classes, but it
13 counts against the 1.7.

14 THE COURT: All right, well, maybe that's --

15 MR. BUTLER: So we'll have to -- we will work on a way to
16 clarify that --

17 THE COURT: Yes, okay. Because the 1.7 is more of a
18 condition than a --

19 MR. BUTLER: Yes.

20 THE COURT: -- treatment mechanism.

21 MR. BUTLER: I think that's right, Your Honor.

22 THE COURT: So I think that's what was confusing to me.
23 All right. This is just a question, you point out -- I think
24 the first time you point it out is at page 108 -- that there
25 are alternatives to exercising the rights. You can get value

1 as a shareholder even if you don't exercise the rights; you can
2 sell your shares, you can sell the rights. And my question is
3 -- and I don't know the answer, but I'd like someone just to
4 focus on it. Do you need, as a public company, to do anything
5 in terms of disclosure beyond this in connection with people
6 selling their shares and, more particularly, selling the rights
7 today? I don't know the answer to that.

8 MR. BUTLER: We --

9 THE COURT: Do you need to file a document under the
10 securities laws?

11 MR. BUTLER: We have been examining that, Your Honor, and
12 will continue to focus on that. We've been consulting with the
13 Equity Committee on these issues. Some of the language you
14 pointed to on 108 has been at the request of the Equity
15 Committee because we're trying to, while preserving all of the
16 obligations we have in connection the S1 in dealing with the
17 (indiscern.) and the separate registration statement, we are
18 trying to provide information to the parties that may have the
19 ability to have these benefits. And what you haven't seen yet
20 but hopefully will see on the 25th, there's a being circulated
21 a draft of a proposed Equity Committee letter that would
22 accompany the solicitation package that would address this, but
23 both Fried Frank and Skadden have been focused on those issues
24 --

25 THE COURT: All right.

1 MR. BUTLER: -- in some detail.

2 THE COURT: All right, I just wanted to make sure you were
3 and I'm glad you are. And again, this is separate from,
4 obviously, the registration in S1.

5 MR. BUTLER: Right.

6 THE COURT: It's only to deal with an interim period where
7 you're telling people you can realize value on these things in
8 advance of the S1 and the registration. I don't know whether
9 you need it or not. And then I didn't get a chance to look
10 closely enough at the revisions dealing with the MDL settlement
11 to know whether you've dealt with these issues or not, but the
12 first one comes up twice, I think, on page 120 and also page
13 185. At the bottom of page 120 you have a discussion of what
14 happens to opt-outs.

15 MR. BUTLER: Yes, Your Honor.

16 THE COURT: It says, "If any class members opt out of the
17 security settlement and ultimately receives an allowed claim in
18 the Debtors' Chapter 11 cases, the amount received the opt out
19 class member to satisfy such claim will be deducted from the
20 amount used to satisfy the Lead Plaintiffs in the securities
21 settlement." It doesn't really say, though, where -- what
22 treatment do they get. It says what's deducted, but do they
23 get the same thing, or do they get -- do they fall under the
24 Unsecured Creditor class or where do they go?

25 MR. BUTLER: No, we can clarify that. They get the same

1 treatment in the same class. There were no opt-outs in the
2 ERISA section, this is just the security section, the security
3 settlement, and they would get the treatment in that class --

4 THE COURT: All right.

5 MR. BUTLER: -- and it would be a deduction. I think the
6 class language actually says that. We'll clarify it in these
7 languages. I will point out, Your Honor, that since we drafted
8 the Disclosure Statement and filed it, we've been in the claims
9 administration process. I think virtually all of the MDL
10 claims that were provided by -- filed by potential opt-outs
11 and people who could have then asserted an opt-out have been
12 expunged --

13 THE COURT: Okay.

14 MR. BUTLER: -- I think, so we were talking about a very
15 small universe of people that may take advantage of that. And
16 we actually may want to address that particular point, which is
17 a new development in the Disclosure Statement as well. But we
18 did -- we were obliged to seek to expunge those. We did do
19 that in September, and I think most of those are now gone
20 because it's at least the Debtors' position, Your Honor, you
21 know, you can do whatever you want to in the District Court
22 from an opt-out perspective, but if you are gonna assert a
23 claim in this estate --

24 THE COURT: You have to beat the bar date.

25 MR. BUTLER: -- you had to meet the bar date relating to

1 that issue.

2 THE COURT: All right, well, in any event, I think if you
3 don't specify what the treatment is here and on page 185 just
4 briefly, people get confused. And then also on page 185 at the
5 top, you give sort of a warning about what will happen if
6 people opt out and then their claim is ultimately allowed. My
7 take from this, but you may want to be more specific, is that
8 by that point, everything may have been distributed, and so
9 they won't get anything even if their claim is allowed, unless
10 there's a reserve provided for in the MDL settlement for opt-
11 outs.

12 MR. BUTLER: We'll take a look at that, Your Honor, as
13 well.

14 THE COURT: Okay.

15 MR. BUTLER: We'll talk to Mr. Etkin about that
16 (indiscern.).

17 THE COURT: All right. And I haven't looked at the
18 distribution mechanism yet under the MDL to see whether it
19 would be a reserve or an opt-out.

20 MR. BUTLER: Well, from the MDL, at least what's intended,
21 Your Honor, is that on or shortly after the effective date, the
22 consideration in the MDL classes will be transferred by the
23 Debtor to the agents established by the MDL in the District
24 Court. So it's the -- it's Garden City and the MDL -- the
25 escrow agents in that settlement, the District Court

1 settlement, that will handle all of that claims administration
2 and all of those distributions. We simply have to deliver the
3 corpus of the Plan currency to them --

4 THE COURT: Okay.

5 MR. BUTLER: -- so we have one distribution under this
6 approach.

7 THE COURT: Okay. All right, and then on page 121, it
8 talks about the use of the insurance proceeds in connection
9 with the MDL, and it says, "The Lead Plaintiffs will also
10 receive a distribution of insurance proceeds up to 88.6
11 million, including the remainder of any insurance proceeds that
12 are not used by the aid to former directors and officers," and
13 I didn't -- that seemed confusing to me. Do they -- does their
14 right to -- I mean, I thought their right to use insurance was
15 prescribed by the settlement, so I don't know what --

16 MR. BUTLER: No, we'll clarify. There's two issues there
17 and we'll be happy to provide some more clarity. First, Your
18 Honor may recall that this Court entered an order earlier in
19 the case that allowed from the Tower B 100 million up to \$5
20 million to be used.

21 THE COURT: So maybe not previously used as opposed --

22 MR. BUTLER: Right, but the top 5 million, at the time we
23 were doing the settlement, the question was what happens to the
24 unused portions of that \$5 million, that's part of how that's
25 to address it. In addition, there is -- under the Tower A

1 settlement arrangement, there is a portion of money that is set
2 aside for criminal and DOJ and SEC use by the -- I think it's
3 DOJ and criminal -- by the certain listed parties, and if it's
4 not used, that reverts back to the MDL --

5 THE COURT: All right.

6 MR. BUTLER: -- Plaintiffs. So what we'll --

7 THE COURT: Well, maybe -- maybe all you need to say then
8 is not used in the ways permitted by the settlement.

9 MR. BUTLER: Right.

10 THE COURT: I just didn't know if this was like an extra -
11 -

12 MR. BUTLER: No.

13 THE COURT: -- thing.

14 MR. BUTLER: Those are the two sources if there are some
15 contingencies under the settlement agreement.

16 THE COURT: All right. Just two more points. On page 174
17 -- I'll just give you this language. I think rather than
18 saying, at the bottom of 174, "Under the Plan, many, if not
19 all, of these causes of action are unnecessary," I think you
20 should probably say, "Because of the Plan's treatment of
21 unsecured Creditors, the Debtors have determined that the
22 affirmative pursuit of many, if not all, of these causes of
23 action would not benefit their estates." And I'll give you
24 that language. It's a little more refined than just being
25 unnecessary.

1 MR. BUTLER: I understand, Your Honor.

2 THE COURT: And then the last point -- and you made -- I'm
3 glad you made the point up front that what's -- the value of
4 the recovery here is based on Plan value, and I don't think it
5 hurts to say in your risk section on 208 where you're talking
6 about the market for the new common stock to remind people
7 again that the market value of the new -- the market price of
8 the new common stock may increase or decrease, or the trading
9 value of the new common stock may increase or decrease from
10 Plan value based on numerous factors, including the market and
11 conditions extraneous to Delphi, as well as other risk factors
12 disclosed herein, so that people, some of whom are not
13 particularly sophisticated, will realize that it's not a
14 guarantee, but it's stock.

15 MR. BUTLER: We'll make those changes as well, Your Honor.

16 THE COURT: Okay, all right. And then I will give you --
17 I had a couple of comments on the Plan that were in the nature
18 of typos, okay, so I will give those to you.

19 MR. BUTLER: Thank you, Judge.

20 THE COURT: And as well as a couple notes to myself to
21 remind you that where you are setting deadlines for various
22 parties to file claims or objections or the like -- and I
23 assume you're doing this; in fact, I confirmed it in a number
24 of places. You're actually going to give them a separate
25 notice of that --

1 MR. BUTLER: Yes, Your Honor.

2 THE COURT: -- you're not going to just rely on the plan
3 for that.

4 MR. BUTLER: No, Your Honor. We'll give specific notice.

5 THE COURT: Okay, so then I will see you on the 25th.

6 MR. BUTLER: Thank you, Your Honor, we'll submit the
7 Scheduling Order to Chambers.

8 THE COURT: Okay, thank you.

9 (Court adjourned)

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22 **Witnesses For The**

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C E R T I F I C A T I O N

I, Penina Wolicki, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Signature of Transcriber

____October 4, 2007____
Date

____PENINA WOLICKI____

typed or printed name